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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,409	12/05/2003	Christopher Detrembleur	PO7956/LeA 36,261	9565
157	7590	03/22/2005	EXAMINER	
BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205			ASINOVSKY, OLGA	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/729,409	<b>Applicant(s)</b> DETREMBLEUR ET AL.	
	<b>Examiner</b> Olga Asinovsky	<b>Art Unit</b> 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/05/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazmaier et al U.S. Patent 6,320,007.

Kazmaier discloses a free radical polymerization process for producing thermoplastic resin comprising: (a) forming a nitroxide stable free radical agent from a precursor material in a reactor vessel, (b) introducing a free radical initiator and at least one polymerizable monomer compound into said reactor vessel; and (c) heating a mixture comprising a free radical initiator, said stable free radical agent, and at least one polymerizable monomer compound in said reactor vessel to form a thermoplastic resin, column 4, lines 45-56. The stable free radical initiator is deriving from relatively inexpensive amine precursor material that may be combined with a stable free radical polymerization process in a single reactor vessel, column 4, lines 37-40. The amine precursor materials are readable in the present claim 1 as being a secondary amine compound represented by the formula (I) in the present claim 1. The precursor materials comprise amines, column 5, line 60. The stable free radical initiator in Kazmaier reference is readable for being a nitroxyl radical derived from the precursor material by oxidation of said precursor material, column 5, lines 57-62, for the present

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claim 9, formula (III). The oxidizing agent is present during the formation a stable free radical initiator, column 6, lines 50-61, column 9, line 37, column 10, line 30. The polymerization is conducted at a temperature at 123C, column 10, line 46.

The difference between the present claims and Kazmaier is that Kazmaier does not disclose the precursor materials comprising amine having the structure specified in the present claim 1. However, it would have been obvious to one of ordinary skill in the art to consider that the precursor material containing amine can be selected in Kazmaier as being analogous to formula (I) in the present claim 1 in light of the various limitations of "Y", "X" and "R4" in the formula (I) in the present claims.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-3 of U.S. Patent No. 6,686,424.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 discloses a process for polymerizing monomers in the

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presence of a nitroxyl radical under heating. It would have been obvious to one of ordinary skill in the art to consider that a secondary amine of the formula (II) in claim 1 in Patent 6,686,424 can be readable for being a secondary amine compound in the present claim1, ~~and~~ since claims 1-3 in Patent 6,686,424 disclose a process for the preparation a nitroxyl radical such that R4 and R5 are readable in the present claims.

5. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being obvious over Detrembleur et al U.S. Patent 6,686,424.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See

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MPEP § 706.02(I)(1) and § 706.02(I)(2). Detrembleur discloses a process for polymerizing ethylenically unsaturated monomers in the presence of a sterically hindered secondary amine, oxidizing agent (A) and free radical initiator, column 2, line 50 through column 4, line 60. 30. It would have been obvious to one of ordinary skill in the art to consider that a secondary amine of the general formula (II) at column 3, line 35 could be readable in the present formula (I) in the present claim 1 in light of the various definitions of the radicals R4 and R5 in said formula (II) in the reference's invention.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References have been considered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

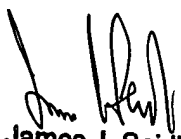
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.A.

March 20, 2005

Olga Asinovsky  
Examiner  
Art Unit 1711

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700